



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 19, 2002

Mr. James T. Russell
Administrative Assistant
27th Judicial District of Texas
P.O. Box 540
Belton, Texas 76513-0540

OR2002-7298

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174016.

The District Attorney for the 27th Judicial District (the "district attorney") received a request for "any and all records pertaining to the investigation concerning" a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy and protects private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977): Information must be withheld from required public

¹We note that the district attorney also seeks to withhold information under section 552.022 of the Government Code. Section 552.022 is not an exception to the public disclosure of information under chapter 552 of the Government Code. Rather, section 552.022(a) enumerates eighteen categories of information that must be released to the public unless the information is expressly confidential under other law or, in the case of section 552.022(a)(1), is excepted from disclosure under section 552.108.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. *See Gov't Code* § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

disclosure under common-law privacy if the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *Id.* at 685. In Open Records Decision No. 393 (1983), this office concluded that although generally only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld from disclosure under common-law privacy, the governmental body was required to withhold the entire police report because the identifying information was inextricably intertwined with other releasable information. *See* Open Records Decision No 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have legitimate interest in such information); Open Records Decision Nos. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), 339 (1982) (information that would identify victim of aggravated sexual abuse must be withheld). In this instance, the requested information relates to an incident that involved an alleged sexual assault, and the requestor knows the name of the assault victim. Under these circumstances, the release of information relating to that incident would invade the victim's privacy. Accordingly, we conclude that the district attorney must withhold all of the requested information under section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make this determination, we need not address your arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

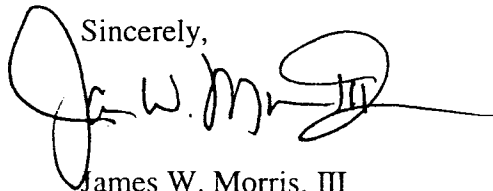
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 174016

Enc: Submitted documents

c: Mr. Gregory T. Farrell
Farrell & Secrest
P.O. Box 1065
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(w/o enclosures)